

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1255

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

IRVIN V. IVERSEN,
Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK.

APPENDIX FOR APPELLEE

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Attorney for Appellee,
502 United States Court House,
Buffalo, New York 14202.

RICHARD E. MELLENGER,
Assistant United States Attorney,
of Counsel.

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PAGINATION AS IN ORIGINAL COPY

APPENDIX

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Schedule C From Defendant's 1970 Return
(From Government Exhibit 38).SCHEDULE C
(Form 1040)
Department of the Treasury
Internal Revenue ServiceProfit (or Loss) From Business or Profession
(Sole Proprietorship)

1970

► Partnerships, joint ventures, etc., must file on Form 1065.
► Attach to Form 1040.

Name as shown on Form 1040

Irvin V. & Esther J. Iversen

Social security number

052 26 6732

A Principal business activity Service
(See separate instructions)product Legal
(For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture, etc.)

B Business name Irvin V. Iversen, Attorney

C Employer identification number 16-0876499

D Business address 5562 Main St, Williamsville, New York

E Indicate method of accounting: (1) ☒ cash; (2) ☐ accrual; (3) ☐ other.

(ZIP code)

F Was there any substantial change in the manner of determining quantities, costs, or valuations between the opening and closing inventories?
☐ YES ☐ NO. If "Yes," attach explanation.G Were you required to file Forms 1096 and 1099 or 1087 for the calendar year 1970? (See "Item G" in separate instructions for Schedule C.)
☐ YES ☐ NO. If "Yes," where were they filed?

1	Gross receipts or gross sales \$ 56036.03	Less: Returns and allowances \$	\$ 56036	03
2	Inventory at beginning of year (if different from last year's closing inventory attach explanation)			
3	Merchandise purchased \$	less cost of any items withdrawn from business for personal use \$		
4	Cost of labor (do not include salary paid to yourself)			
5	Material and supplies			
6	Other costs (explain in Schedule C-1)			
7	Total of lines 2 through 6			
8	Inventory at end of this year			
9	Cost of goods sold and/or operations (subtract line 8 from line 7)			
10	Gross profit (subtract line 9 from line 1)		56036	03
OTHER BUSINESS DEDUCTIONS				
11	Depreciation (explain in Schedule C-2)	1633	57	
12	Taxes on business and business property (explain in Schedule C-1)			
13	Rent on business property	2105		
14	Repairs (explain in Schedule C-1)	81	08	
15	Salaries and wages not included on line 4 (exclude any paid to yourself)	9025	24	
16	Insurance	164	75	
17	Legal and professional fees	8766	48	
18	Commissions			
19	Amortization (attach statement)			
20	Retirement plans, etc. (other than contributions made on your behalf—see separate instructions)			
21	Interest on business indebtedness	1685	04	
22	Bad debts arising from sales or services			
23	Depletion			
24	Other business expenses (explain in Schedule C-1)	9555	65	
25	Total of lines 11 through 24		33016	81
26	Net profit (or loss) (subtract line 25 from line 10). Enter here and on line 35, Form 1040. ALSO enter on Schedule SE, Part I, line 1.		23019	22

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 24

Line No.	Explanation	Amount	Line No.	Explanation	Amount
14	Repairs office equip.	\$ 81.08		Water	\$ 71.35
24	Employee benefit	215.18		Office supplies	1136.50
	Professional dues	199.00		Postage	555.00
	Professional library	1296.67		Bank charges	135.91
	Phone	1493.15		Office cleaning	312.00
	50% home phone	169.47		Advertisement & Goodwill	270.18
	business use			Client entertainment	59.07
	Business travel	50.71		Disbursement, misc.	530.44
				Line 24 continued page 2	

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15-81171-1

**Schedule E From Defendant's 1970 Return
(From Government Exhibit 38).**

Schedules E&R—Supplemental Income Schedule AND Retirement Income Credit Computation
(Form 1040)

Department of the Treasury
Internal Revenue Service

(From pensions and annuities, rents and royalties, partnerships, estates and trusts, etc.)
▶ Attach to Form 1040.

1970

Name(s) as shown on Form 1040

Irvin V. & Esther J. Iversen

Your Social Security Number

052 : 26 6732

Schedule E—Supplemental Income Schedule (Schedule R on back)

Fill out and attach a separate Part I for each pension or annuity. Enter combined total of taxable portions on line 5.

Part I Pension and Annuity Income. • If pension or annuity is fully taxable for 1970, complete only lines 1, 2 and 5. • If not fully taxable, complete all lines.

- 1 Name of payer _____
- 2 If your employer contributed part of the cost, is your contribution recoverable (or has your contribution been recovered) tax-free within 3 years? ☐ Yes ☐ No.
If "Yes," show: Your contribution \$ _____, Your contribution recovered in prior years \$ _____
- 3 Amount received this year _____
- 4 Amount excludable _____
- 5 Taxable portion (subtract line 4 from line 3) _____

Part II **Rent and Royalty Income** (If you received rents from the operation of a farm but you did not materially participate in its operation, report rents in column (b). Note: If in crop shares, report in year reduced to money or its equivalent. See instructions for Part II on page 12.)

[illegible]

- 2 Net income (or loss) from rents and royalties (column (b) plus column (c) less columns (d) and (e)) . .

Part III **Income or Losses from Partnerships, Estates or Trusts, and Small Business Corporations** (b) Check applicable box

Partnership		Estate or Trust		Small Bus. Corp.		(c) Employer identification number		(d) Income or loss	
Morris Greenam & Iversen		X				16-0910317		570.87	
1299 Union									
West Seneca, New York									

- | | | |
|--|------------|-----------|
| 1 Income (or loss) Total of column (d) | 570 | 87 |
| TOTAL OF PARTS I, II, AND III (Enter here and on Form 1040, line 37.) | 570 | 87 |

Explanation of Column (e), Part II

[illegible]

Schedule for Depreciation Claimed in Part II Above. Taxpayers using Revenue Procedures 62-21 and 65-13: Make no entry in column (b), enter the cost or other basis of assets held at end of year in column (c), and enter the accumulated depreciation at end of year in column (d). If you need more space, use Form 4562.

[illegible]

- Summary of Depreciation**

Summary of Depreciation

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first-year (section 179)	Other (specify)	Total
1 Under Rev. Procs. 62-21 and 65-13							
2 Other							

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**Schedule C From Defendant's 1972 Return
(From Government Exhibit 40).**

**SCHEDULE C
(Form 1040)**

**Profit (or Loss) From Business or Profession
(Sole Proprietorship)**

1972

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 1040.
▶ Partnerships, joint ventures, etc., must file Form 1065.

Name(s) as shown on Form 1040

Irvin V. & Virginia S. Iversen

Social security number

052 26 6732

A Principal business activity: Services ; product Legal
(See Schedule C instructions) (For example: retail—hardware; wholesale—telecom; services—legal; manufacturing—furniture; etc.)

B Business name Irvin V. Iversen, Attorney C Employer identification number DX 16-0876499

D Business address (number and street) 5562 Main Street
City, State and ZIP code Williamsville, New York 14221

E Indicate method of accounting: (1) ☒ cash; (2) ☐ accrual; (3) ☐ other.

F Were you required to file Form 1096 for 1972? (See Schedule C instructions) ☐ YES ☐ NO. If "Yes," where filed? ▶

G Is this business located within the boundaries of the city, town, etc., indicated? ☐ YES ☒ NO.H Did you own this business at the end of 1972? ☒ YES ☐ NO.I How many months in 1972 did you own this business? 12J Was an Employer's Quarterly Federal Tax Return, Form 941, filed for this business for any quarter in 1972? ☐ YES ☐ NO.

IMPORTANT—All applicable lines and schedules must be filled in.

INCOME	1	Gross receipts or sales \$ <u>87969.28</u> Less returns and allowances \$ <u>152.27</u> Balance ▶	<u>87817</u>	<u>01</u>
	2	Less: Cost of goods sold and/or operations (Schedule C-1, line 6)		
	3	Gross profit	<u>87817</u>	<u>01</u>
	4	Other income (attach schedule)	<u>87817</u>	<u>01</u>
	5	TOTAL income (add lines 3 and 4)		
DEDUCTIONS	6	Depreciation (explain in Schedule C-2)	<u>2889</u>	<u>34</u>
	7	Taxes on business and business property (explain in Schedule C-3)		
	8	Rent on business property	<u>2369</u>	<u>34</u>
	9	Repairs (explain in Schedule C-3)	<u>173</u>	<u>96</u>
	10	Salaries and wages not included on line 3, Schedule C-1 (exclude any paid to yourself)	<u>19129</u>	<u>62</u>
	11	Insurance	<u>258</u>	<u>69</u>
	12	Legal and professional fees	<u>6720</u>	<u>77</u>
	13	Commissions		
	14	Amortization (attach statement)		
	15	(a) Pension and profit-sharing plans (see Schedule C instructions) (b) Employee benefit programs (see Schedule C instructions)		
	16	Interest on business indebtedness	<u>3264</u>	<u>38</u>
	17	Bad debts arising from sales or services		
	18	Depletion		
	19	Other business expenses (specify):		
		(a) Employee benefits	<u>44</u>	<u>75</u>
		(b) Professional dues	<u>459</u>	<u>51</u>
		(c) Professional library	<u>1688</u>	<u>45</u>
		(d) Phone	<u>2967</u>	<u>60</u>
		(e) Business travel	<u>1180</u>	<u>76</u>
		(f) Office supplies, postage, & bank charges	<u>2748</u>	<u>29</u>
	(g) Office cleaning & utilities	<u>490</u>	<u>64</u>	
	(h) Advertisement & goodwill	<u>310</u>	<u>01</u>	
	(i) Client entertainment	<u>124</u>	<u>27</u>	
	(j) Disbursements	<u>1973</u>	<u>04</u>	
	(k) Charge accounts 1/3 business	<u>1729</u>	<u>72</u>	
	(l) Apt. & home phone, business allocation	<u>485</u>	<u>12</u>	
	(m) Private auto allocation for business	<u>2670</u>	<u>57</u>	
	(n) Living expense, Williamsville area (rent & utilities only)	<u>1911</u>	<u>41</u>	
	(p) Total other business expenses (add lines 19(a) through 19(o))	<u>18784</u>	<u>54</u>	
20	Total deductions (add lines 6 through 19)	<u>53590</u>	<u>74</u>	
21	Net profit (or loss) (subtract line 20 from line 5). Enter here and on line 35, Form 1040. ALSO enter on Schedule SE, line 1	<u>34226</u>	<u>27</u>	

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Schedule C From Defendant's 1971 Return
(From Government Exhibit 39).

SCHEDULE C
(Form 1040)

Profit (or Loss) From Business or Profession
(Sole Proprietorship)

1971

Department of the Treasury
Internal Revenue Service

Partnerships, joint ventures, etc., must file on Form 1065.
Attach to Form 1040.

Name(s) as shown on Form 1040

Irvin V. & Esther J. Iversen

Social security number
052 | 26 | 6732

- A Principal business activity Legal : product Services
(See separate instructions) (For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.)
- B Business name Irvin V. Iversen, Attorney C Employer identification number 16-0876499
- D Business address 5562 Main Street, Williamsville, New York & Hancock, New York
- E Indicate method of accounting: (1) ☒ cash; (2) ☐ accrual; (3) ☐ other. (ZIP code)
- F Was there any substantial change in the manner of determining quantities, costs, or valuations between the opening and closing inventories?
☐ YES ☐ NO. If "Yes," attach explanation.
- G Were you required to file Forms 1096 and 1099 or 1087 for the calendar year 1971? (See "Item G" in separate instructions for Schedule C.)
☐ Yes ☐ NO. If "Yes," where were they filed? ➤

1	Gross receipts or gross sales	\$ 71641.79	Less: Returns and allowances	\$ 459.00	\$ 71182.79
2	Inventory at beginning of year (if different from last year's closing inventory attach explanation)				
3	Merchandise purchased \$		less cost of any items withdrawn from business for personal use \$		
4	Cost of labor (do not include salary paid to yourself)				
5	Material and supplies				
6	Other costs (explain in Schedule C-1)				
7	Total of lines 2 through 6				
8	Inventory at end of this year				
9	Cost of goods sold and/or operations (subtract line 8 from line 7)				
10	Gross profit (subtract line 9 from line 1)				71182.79
OTHER BUSINESS DEDUCTIONS					
11	Depreciation (explain in Schedule C-2)	2200	71		
12	Taxes on business and business property (explain in Schedule C-1)				
13	Rent on business property	2850			
14	Repairs (explain in Schedule C-1)	158	80		
15	Salaries and wages not included on line 4 (exclude any paid to yourself)	15142	27		
16	Insurance	487	12		
17	Legal and professional fees	6724	85		
18	Commissions				
19	Amortization (attach statement)				
20	(a) Pension and profit-sharing plans (See instructions)				
	(b) Employee benefit programs (See instructions)				
21	Interest on business indebtedness	1429	04		
22	Bad debts arising from sales or services				
23	Depletion				
24	Other business expenses (explain in Schedule C-1)	17223	87		
25	Total of lines 11 through 24				46215.67
26	Net profit (or loss) (subtract line 25 from line 10). Enter here and on line 34, Form 1040. ALSO enter on Schedule SE, Part I, line 1.				24967.12

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 24

Line No.	Explanation	Amount	Line No.	Explanation	Amount
14	Office equip. repair	\$ 158.00	24	Office supplies	\$ 1278.92
24	Employee benefits	147.00		Postage	1121.84
	Professional dues	278.00		Bank charges	247.84
	Professional library	1367.78		Office cleaning	270.00
	Phone	2359.61		Advertisement & goodwill	403.28
	Home & Apt. phone	355.29		Client entertainment	220.24
	business allocation			Disbursements, misc.	1567.67
	business travel	869.04		Charge accounts 1/3	1112.50
	Utilities	297.79		business	
				Continued Page 2	

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Schedules E&R—Supplemental Income Schedule AND Retirement Income Credit Computation
(Form 1040)
Department of the Treasury
Internal Revenue Service

(From pensions and annuities, rents and royalties, partnerships, estates and trusts, etc.)
▶ Attach to Form 1040.

Name(s) as shown on Form 1040	Your social security number
Irvin V. & Esther J. Iversen	052 126 16732

Part I: Pension and Annuity Income. If fully taxable, do not complete this part. Enter amount on Form 1040, line 39(a). For each pension or annuity not fully taxable, attach a separate Part I and enter combined total of taxable portions on line 5.

- 1 Name of payer _____
- 2 Did your employer contribute part of the cost? ☐ Yes ☐ No. If "Yes," is your contribution recoverable within 3 years of the annuity starting date? ☐ Yes ☐ No.
If "Yes," show: Your contribution \$ _____, Your contribution recovered in prior years \$ _____
- 3 Amount received this year _____
- 4 Amount excludable this year _____
- 5 Taxable portion (subtract line 4 from line 3) _____

Note: If you are reporting farm rental income here that is based on crops or livestock produced by a tenant farmer but you did not materially participate in the operation of the farm, see instr. on page 14 to determine if you should also file Form 4835.

[illegible]

- 2 Net income or (loss) from rents and royalties (column (b) plus column (c) less columns (d) and (e)) . .

Part III **Income or Losses From Partnerships, Estates or Trusts, and Small Business Corporations.** If any of the partnership, estate or trust income reported below is from farming, see instructions on page 14, to determine if you should also file Form 4835.

determine if you should also file Form 4835.		(b) Check applicable box:			(c) Employer identification number	(d) Income or loss
(a) Name and address	Partnership	Estate or trust	Small Bus. Corp.			
Morris, Greenan & Iversen	X			16-0910317	225.47	

- | | | |
|---|------------|-----------|
| 1 Income or (loss) Total of column (d) | 225 | 47 |
| TOTAL OF PARTS I, II, AND III (Enter here and on Form 1040, line 37) | 225 | 47 |

Item	Amount	Item	Amount	Item	Amount

Schedule for Depreciation Claimed in Part II Above. *Note:* For new depreciation rules, see Form 4832 (Revised). Form 4832 (Revised) also explains the effect the new rules have on guideline lives under Rev. Procs. 61-21 and 65-13. Taxpayers using these lives: Make no entry in column b, enter amounts in column c for assets held at end of year, and enter accumulated depreciation at end of year in column d. If you need more space, use Form 4562.

(a) Group and guideline class or description of property	(b) Date acquired	(c) Cost or other basis	(d) Depreciation allowed or allowable in prior years	(e) Method of computing depreciation	(f) Life or rate	(g) Depreciation for this year
1 Total additional first-year depreciation (do not include in items below) →						
2 Depreciation from Form 4832						
3 Other depreciation:						
4 Totals						

	Straight line	Declining balance	Sum of the years-digits	Units of production	Other (specify)	Total
1 Under Rev. Procs. 62-21 and 65-13.						
2 Depn. from Form 4332						
3 Other						

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Page 1 of Partnership Return—Morris, Greenan,
and Iversen—1970 (From Government Exhibit 42).

U.S. Partnership Return of Income

Form 1065
Department of the Treasury
Internal Revenue Service

FOR CALENDAR YEAR 1970 or other taxable year beginning

1970, and ending 19

1970

A Principal business activity
(See instructions)

Name

SERVICES

B Principal product or service
(See instructions)

LEGAL

C Enter total assets from line
13, column (D), Schedule L

City

\$10283.92

WEST SENECA, NEW YORK 14224

D Employer identification No.

16-0910317

E Business Code No.

8100

F County in which located

ERIC

G Date business commenced

11/1/66

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction Q.

INCOME	1	Gross receipts or gross sales	Less: Returns and allowances	2	X 2269.92
	2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)			
	3	Gross profit			2269.92
	4	Income (loss) from other partnerships, syndicates, etc. (attach statement)			
	5	Nonqualifying dividends (attach list—see Instruction 5)			
	6	Interest			
	7	Rents (Schedule B)			
	8	Royalties (attach schedule)			
	9	Net farm profit (loss) (Schedule F, Form 1040)			
	10	Net ordinary gain (loss) (line 10, Schedule D, Form 1065)			
	11	Other income (attach schedule)			
12	TOTAL income (lines 3 through 11)	2	X 2269.92		
DEDUCTIONS	13	Salaries and wages (other than to partners)			
	14	Payments to partners—salaries and interest			
	15	Rent			
	16	Interest (Schedule J)			32.29
	17	Taxes (Schedule J)			
	18	Bad debts (Schedule H if reserve method is used)			
	19	Repairs			
	20	Depreciation (Schedule I)			375.20
	21	Amortization (attach schedule)			
	22	Depletion (attach schedule)			
23	Retirement plans, etc. (other than contributions made on partners' behalf—see Instruction 23)				
24	Other deductions (Schedule J)			149.80	
25	TOTAL deductions (lines 13 through 24)			557.29	
26	Ordinary income (loss) (line 12 less line 25) (see General Instruction G)			1712.63	

Schedule A—COST OF GOODS SOLD

10

1	Inventory at beginning of year (if different from last year's closing inventory, attach explanation)	
2	Purchases	
	Less: Cost of items withdrawn for personal use	
3	Cost of labor	
4	Material and supplies	
5	Other costs (attach schedule)	
6	Total of lines 1 through 5	
7	Less: Inventory at end of year	
8	Cost of goods sold. Enter here and on line 2, above (Method of inventory valuation)	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Signature of partner or member: *James Morris* Date: 7/15/71

Signature of preparer other than partner or member: *Henry K. Schreder, CPA* Date: 7/15/71

Address: 1299 UNION RD. BUFFALO, N.Y.

GOVERNMENT
EXHIBIT
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Page 1 of Partnership Return—Morris, Greenan, and
Iversen (From Government Exhibit 45).

U.S. Partnership Return of Income

FOR CALENDAR YEAR 1971 or other taxable year beginning

1971, and ending

19

Form **1065**
Department of the Treasury
Internal Revenue Service

1971

A Principal business activity
(See page 6 of instructions)

Name

JACK I.
MORRIS, GREENAN & IVERSEN

D Employer Identification No.

5-0910317

B Principal product or service
(See page 6 of instructions)

Number and street

Law Firm

1299 UNION ROAD

E Business Code No. (See page 6
of instructions)

8100

F County in which located

ERIE

C Enter total assets from line
13, column (B), Schedule L

City or town, State, and ZIP code

\$ 9937.51

WEST SENeca, NEW YORK 14224

G Date business commenced

11/66

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction Q.

INCOME	1a	Gross receipts or sales \$	1b	Less returns and allowances \$	Balance	1c	30196
	2	Less: Cost of goods sold (line 34, Schedule A) and/or operations (attach schedule)				2	
	3	Gross profit				3	30196
	4	Ordinary income (loss) from other partnerships, syndicates, etc. (attach statement)				4	
	5	Nonqualifying dividends (attach list—see instruction 5)				5	
	6	Interest				6	
	7	Rents (Schedule I)				7	
	8	Royalties (attach schedule)				8	
	9	Net farm profit (loss) (attach Schedule F (Form 1040))				9	
	10	Net ordinary gain (loss) (line 9, Form 4797)				10	
	11	Other income (attach schedule)				11	
12	TOTAL income (lines 3 through 11)				12	30196	
DEDUCTIONS	13	Salaries and wages (other than to partners)				13	
	14	Payments to partners—Salaries and interest				14	
	15	Rent				15	
	16	Interest (attach schedule)				16	
	17	Taxes (attach schedule)				17	
	18	Bad debts (Schedule I if reserve method used)				18	
	19	Repairs				19	
	20	Depreciation (Schedule J)				20	25508
	21	Amortization (attach schedule)				21	
	22	Depletion (attach schedule)				22	
	23a	Retirement plans, etc. (other than contributions made on partners' behalf—see instruction 23a)				23a	
	23b	Employee benefit programs (see instruction 23b)				23b	
	24	Other deductions (attach schedule)				24	72329
	25	TOTAL deductions (lines 13 through 24)				25	97837
26	Ordinary income (loss) (line 12 less line 25) (see General Instruction G)	LOSS			26	(67641)	

Schedule A—COST OF GOODS SOLD (See instruction 2)

27	Inventory at beginning of year (if different from last year's closing inventory, attach explanation)	27	
28a	Purchases \$	28b	Less cost of items withdrawn for personal use \$
29	Cost of labor	29	
30	Material and supplies	30	
31	Other costs (attach schedule)	31	
32	Total of lines 27 through 31	32	
33	Less: Inventory at end of year	33	
34	Cost of goods sold. Enter here and on line 2, above	34	

Method of inventory valuation

Under penalty of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Signature of partner or member

Henry K. Schaefer CPA

1299 UNION RD. BUFFALO, N.Y.

Signature of preparer other than partner or member

GOVERNMENT
EXHIBIT

Address

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Date

4/21/72

6/21/72

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Page 1 of Partnership Return--Morris, Greenan, and
Iversen (From Government Exhibit 48).
U.S. Partnership Return of Income

1065

72

A Name of the partnership **MORRIS, GREENAN & IVERSEN**
B Employer identification no. **1626522304230**
C Principal business activity **LEGAL SERVICES**
D Principal business address **1214 UNION ROAD**
E Principal business address **WEST SENeca, NEW YORK 14224**
F Fiscal year beginning on **12/31** and ending on **12/31**
G Date of partnership agreement **1/66**
H Is this business operated within the boundaries of the city, town, etc., indicated? **Yes**
I Was this partnership dissolved at the end of 1972? **No**
J How many partners? **3** **INACTIVE**

INCOME		1a	1b	1c
		Less: cost of goods sold (see Schedule A) and other operations (attach schedule)		1004 63
		Other income (gross income from other partnerships, royalties, etc. (attach statement))		1004 63
		Interest		
		Rents		
		Dividends		
		Capital gains		
		Other income (attach schedule)		
		TOTAL (lines 1a through 1i)		1004 63
DEDUCTIONS				
		Charitable contributions (attach schedule)		
		Gift tax (attach schedule)		
		State and local taxes (attach schedule)		
		Depreciation (Schedule A)		93 39
		Amortization (attach schedule)		
		Depletion (attach schedule)		
		Charitable contributions (other than contributions made on partner's behalf (see instruction 23a))		
		Employer's benefit programs (see instruction 23b)		
		Other deductions (attach schedule)		
		TOTAL deductions (lines 13 through 24)		113 39
		Ordinary loss (attach schedule) (line 12 minus line 25) (see General instruction G)		891 24

Schedule A--COST OF GOODS SOLD (See instruction 2)		27	28a	28b	29	30	31	32	33	34
		Inventory at beginning of year (different from last year's closing inventory, attach explanation)								
		Less: cost of goods sold (attach schedule)								
		Cost of other								
		Materials and supplies								
		Other costs (attach schedule)								
		Total (lines 27 through 31)								
		Less: cost of goods sold (attach schedule) (line 27 through 31 minus line 32)								

Signature of partner or member
Henry K. Schroeder CPA
1214 Union Road, Buffalo, NY
7/5/73
7/5/73
GOVERNMENT EXHIBIT
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Charge of the Court.

(Proceedings resumed, pursuant to recess,
commencing at 4:37 P.M.)

CHARGE OF THE COURT

THE COURT:

Ladies and gentlemen, at this point I will give to you the principles of law which you are to apply in your deliberations when you again go back to the jury room. Now, I mention again that we are in the area of determining what the facts are, finding facts, that this is something that lies completely within your province, and it is nothing that either the attorneys or I have anything to do with. I don't know if in these instructions I make reference to some factual situation, if I do it is merely for the purpose of illustrating or making more clear some point of law. If I do, again you would take upon yourself the full responsibility for determining facts, and even if I say something about it, and you disagree wholly or partially, it is your determination that controls and not mine.

Now, from time to time I have made some rulings of law, mainly as to objections to

Charge of the Court.

1 questions or striking some evidence from the
2 record, and you are not to read into anything
3 that I have done in that yard any thinking
4 that I have any feeling one way or the other
5 as to the guilt or innocence of Mr. Iversen,
6 and even if you would so feel, you are to
7 disregard that completely, because again this
8 is a finding of fact, the ultimate finding of
9 fact with which you are charged.

10 Now, you have been told that you have an
11 information and this will come to you in the
12 jury room as Court Exhibit A, and there are
13 three separate counts in that information.
14 It charges Mr. Iversen with having willfully
15 and knowingly failed to make and file federal
16 income tax returns for three calendar years,
17 namely, 1970, 1971 and 1972, in each of which
18 he allegedly had a gross income in excess of
19 the amount for which a federal income tax
20 was required to be filed. Each of the three
21 counts deal with a violation of the same
22 statute, and they differ only as to the date,
23 the year involved and the date by which the
24 returns had to be filed, and the alleged amount
25 of gross income. The rules of law that apply

Charge of the Court.

1 to the counts are exactly the same. We are
2 not concern with civil liability for the payment
3 of a tax, we are concerned with criminal
4 liability for the non-filing, the non-filing
5 in a timely fashion, that is the criminal case.
6 Mr. Iversen is charged with the commission of
7 a crime, and the fact that he may or may not
8 have settled his civil liabilities relative
9 to the payment of the taxes is not to be con-
10 sidered by you at all in determining the issues
11 in this case, except as you may find that in
12 some reasoned way that it bears upon some one
13 of the elements or factors which I will set
14 forth for you.

15 Now, I will read one count of the informa-
16 tion, and then only refer in summary to the
17 other two counts. Count 1 says, "That during
18 the calendar year 1970 the defendant, Irvin
19 V. Iversen, who was a resident of the Village
20 of East Aurora, State of New York, had and
21 received a gross income of \$57,856.82; that
22 by reason of such income he was required by
23 law, following the close of the calendar year
24 1970 and on or before April 15, 1971, to make
25 an income tax return to the District Director

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Charge of the Court.

1 of Internal Revenue for the Internal Revenue
2 District of Buffalo, at Buffalo, in the Western
3 District of New York, or to the Director,
4 Internal Revenue Service Center, North Atlantic
5 Region, Andover, Massachusetts, stating
6 specifically the items of his gross income
7 and any deductions and credits to which he
8 was entitled; that well knowing all of the
9 foregoing facts, he did willfully and knowingly
10 fail to make the said income tax return to the
11 said District Director of Internal Revenue, to
12 the said Director of the Internal Revenue
13 Service Center, or to any other proper officer
14 of the United States; this being in violation
15 of Section 7203 of the Internal Revenue Code
16 of the United States."

17 Count 2 is couched in the same language,
18 except that the calendar year involved is
19 1971, and the allegation is that he had and
20 received a gross income of \$71,461.74, and by
21 reason of that he was obligated to make and
22 file his income tax return on or before April
23 15, 1972.

24 In Count 3, again, the same language,
25 except that the calendar year 1972 is involved,

Charge of the Court.

1 and the alleged amount of gross income is
2 \$88,531.70, and that the return, which must
3 necessarily have been filed according to the
4 information, had to have been filed on or
5 before April 15, 1973.

6 Now, each of these allegations had to be
7 in violation of Section 7203 of the Internal
8 Revenue Code, and that says in pertinent part:
9 "Any person required under this Title -- and
10 this is Title 26 of the Internal Revenue
11 Code -- to make a tax return, who willfully
12 fails to make sure return at the time or times
13 required by law or regulations, shall be guilty
14 of an offense against the laws of the United
15 States."

16 There are three essential elements to
17 constitute one's guilt of having violated
18 Section 7203. Firstly, the defendant must
19 be shown to have been a person who was required
20 by law or regulation to make a return of his
21 income for the particular taxable year and,
22 secondly, that he failed to make such return
23 at the time required by law, and I have given
24 you those dates, namely, April 15 of 1971 and
25 of '72 and of '73 and, thirdly, that the

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OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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Charge of the Court.

1 defendant's failure to make the return for
2 those respective years was willful. The burden
3 is on the prosecution, represented here by
4 Mr. Mellenger, to prove every element of the
5 offense charged, of each offense charged beyond
6 reasonable doubt, and that is a phrase that
7 I will in due course in these instructions de-
8 fine for you. Even though Mr. Iversen has
9 elected to testify in his own behalf and to
10 put in additional evidence, the burden of
11 proof remains with the Government on the basis
12 of all the evidence which is before you.

13 An individual required to make a federal
14 income tax return for any year in which he had
15 a gross income from wages, salaries, interest,
16 rents, royalties, business earnings during the
17 calendar year in excess of certain statutory
18 limits, and for the calendar year 1970 and
19 1971 that statutory limit or threshold was
20 \$2,300., and in 1970 it was \$2,800.

21 A gross income is defined for our purposes
22 as being income which is received in money
23 or its equivalent less than the cost of earn-
24 ing the income. Mr. Iversen is a person
25 required to file a tax return if he has gross

Charge of the Court.

1 income during any calendar year in question
2 in excess of that statutory amount, even though
3 he might be entitled to deductions from that
4 amount in a sufficient amount so that no tax
5 would be due.

6 That a tax that is due and owing is not an
7 essential element of the offense which is
8 charged in this information, nor is the intent
9 to evade payment of taxes an essential element.
10 The Government must establish beyond a reason-
11 able doubt that the failure to file a tax re-
12 turn on or before the respective date was done ←
13 willfully and knowingly. Specific intent of
14 willfulness is an essential element of the
15 offense or failure to file an income tax re-
16 turn.

17 The term "willfully" used in connection
18 with this offense means voluntarily, purposely,
19 deliberately and intentionally, as distinguished
20 from accidentally, inadvertently or negligently.
21 Mere negligence, even gross negligence, is not ←
22 sufficient to constitute willfulness under the
23 criminal law. The failure to make a timely
24 return is willful if the defendant's failure
25 to act was voluntary and purposeful, and

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Charge of the Court.

1 with the specific intent to violate a known
2 legal duty, namely, the law which requires
3 him to file a timely return which discloses
4 to the Government facts material to the deter-
5 mination of the individual tax liability.

6 Now, I must hedge somewhat on my reference
7 to negligence. Negligence per se is no de-
8 fense. The man must be found to have been
9 acting voluntarily and willfully and inten-
10 tionally, but if he were negligent, as the
11 proof might show in this case, in keeping
12 proper books or keeping a proper organization
13 of books, if you deem that to be negligence,
14 that area or type of negligence would not
15 be sufficient to negate the willfulness and
16 intention that the law requires for criminality.

17 Now, there is no necessity that the
18 Government prove that the defendant had an
19 intention to defraud the Government or to
20 evade the payment of any taxes in order for
21 the defendant's failure to be willful under
22 this provision of the law. On the other hand,
23 the defendant's conduct is not willful if you
24 find that he failed to file a tax return be-
25 cause of inadvertence or accident or due to

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WESTERN DISTRICT OF NEW YORK

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Charge of the Court.

1 his good faith misunderstanding of the require-
2 ments of the law. The excuse that Mr. Iversen
3 was too busy or was under domestic and financial
4 stresses are not sufficient to negate the
5 element of willfulness. An intent to report
6 the income and pay the tax sometime in the
7 future does not offset the willful failure to
8 file tax returns, as required, if on the date
9 the income tax return is required to be filed
10 the defendant is aware of his obligation to
11 file and yet purposely and voluntarily does
12 not file. Likewise, the fact that the de-
13 fendant did file his returns after being
14 contacted by the Internal Revenue Service
15 also does not negate willfulness, if you find
16 that prior to the returns being filed the
17 defendant was required to file a return, knew
18 that he was required to do so, and willfully
19 did not. If for any reason acceptable to you,
20 defendant's failure to file on or before the
21 respective date required by the law was not
22 willful, the element of willfulness is not
23 entirely negated. You may find that at a
24 certain subsequent time that the previous
25 reason was no longer viable, no longer good,

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WESTERN DISTRICT OF NEW YORK

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Charge of the Court.

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1 no reason was acceptable to you, if you should
2 find in the course of your deliberations that
3 such a fact situation does exist, and that
4 at such later time the defendant willfully
5 failed to file his past due returns, the
6 Government will have proven, if this is proven
7 beyond a reasonable doubt, the essential
8 element of willfulness.

9 Now, an act is done knowingly if it is
10 done voluntarily and intentionally, and not
11 because of mistake or accident or other in-
12 nocent reason. The purpose of adding the
13 word "knowingly" was to insure that no one
14 would be convicted for an act done because
15 of mistake or accident or other innocent
16 reason. As stated before, with respect to
17 an offense such as charged in this case,
18 specific intent must be proved beyond a rea-
19 sonable doubt before there can be a conviction.

20 There are certain rules of law, some of
21 which I have already mentioned, which are
22 common to all criminal cases, and which you
23 must apply in reviewing the evidence which
24 is before you. A basic rule in all criminal
25 cases is that the defendant is presumed to be

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Charge of the Court.

1 innocent. That presumption of innocence re-
2 mains with the defendant, Mr. Iversen, through-
3 out the trial, and remains at this time, it
4 continues to exist until such time as each
5 of you is convinced, if you ever are, beyond
6 a reasonable doubt by legal and competent
7 evidence that the defendant is guilty of the
8 offense or offenses charged. The burden of
9 proving that a person is guilty beyond a
10 reasonable doubt rests with the Government at
11 all times, it never shifts to the defendant.
12 In order to sustain its burden, the Government
13 must present proof which is sufficiently
14 strong to convince each of you of the defendant's
15 guilt beyond a reasonable doubt, and the
16 requirement that the prosecution prove the
17 defendant's guilt beyond a reasonable doubt
18 extends to every essential element of the
19 crime or crimes, as I have given to you, that
20 have been charged against the defendant.
21 However, in determining whether the guilt of
22 the defendant as to each and every essential
23 element of the crime has been established
24 beyond a reasonable doubt, you are not limited
25 to the proof that came from the Government's

Charge of the Court.

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1 witnesses. If you are satisfied from a review
2 of all of the evidence in the case, both the
3 Government's and the defendant's, that the
4 evidence as to a particular count establishes
5 guilt beyond a reasonable doubt, then you may
6 convict the defendant on that count. On the
7 other hand, if you have a reasonable doubt at
8 any point with respect to a particular count
9 under consideration, then you must acquit the
10 defendant on that count. You will, of course,
11 separately weigh and determine the evidence
12 as to each count in the information, that is,
13 you will determine the guilt or innocence of
14 the defendant as to each of the three counts
15 as set forth in the information.

16 Now, I have promised to define the phrase
17 "beyond a reasonable doubt." A reasonable
18 doubt is a doubt which is based upon reason
19 and upon common sense, and which arises from
20 the state of the evidence. Of course, it is
21 rarely possible to prove anything to an ab-
22 solute certainty, and proof beyond a reasonable
23 doubt is established if the evidence is such
24 as you would be willing to act upon and rely
25 upon in the most important of your own affairs.

Charge of the Court.

1 The defendant is not to be convicted upon mere
2 suspicion or conjecture. A reasonable doubt
3 may arise not only from the evidence produced,
4 but a lack of evidence. Because the burden
5 is upon the prosecution to prove beyond a
6 reasonable doubt that the defendant is guilty
7 of every essential element of the crime charged,
8 the defendant has a right to rely upon any
9 failure of the prosecution to establish such
10 proof. The defendant may also rely upon evi-
11 dence brought out upon cross-examination of the
12 witnesses for the prosecution or, of course,
13 also upon whatever might be brought out on
14 direct examination and, of course, in his own
15 evidence, in his own testimony. A reasonable
16 doubt is a doubt, as I have said, as is based
17 upon reason and as appeals to your power of
18 logic. It is a doubt which arises out of
19 something tangible in the evidence in the
20 case or something lacking, and is to be dis-
21 tinguished from a doubt which might be based
22 upon some emotion, such as upon a whim or
23 fancy, in essence, it is a doubt for which you
24 have a reason. If you feel uncertain and not
25 fully convinced that the defendant is guilty

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WESTERN DISTRICT OF NEW YORK

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Charge of the Court.

1 of a particular crime charged, and you believe
2 you are acting in a reasonable manner, and you
3 believe a reasonable person in any matter of
4 like importance would hesitate to convict
5 because of such a doubt that you have, that
6 is a reasonable doubt, to the benefit of which
7 the defendant is entitled. If you have such
8 a doubt you must convict. A reasonable doubt
9 in your mind as to any essential element of
10 the crime entitles Mr. Iversen to acquittal
11 of the particular crime involved. However,
12 the rule that the Government must prove every
13 essential element of the crime beyond a rea-
14 sonable doubt does not mean that you must be-
15 lieve the testimony of every Government wit-
16 ness as being true beyond a reasonable doubt
17 or that every piece of evidence that is of-
18 fered is true beyond a reasonable doubt. It
19 means only that the credible evidence as
20 weighed and found by you under these instructions
21 and as viewed as a whole, must establish every
22 essential element of the crime and the de-
23 fendant's guilt beyond a reasonable doubt.

24 Now, as the sole judges of the facts,
25 you have to determine which of the witnesses

Charge of the Court.

1 you believe and what portion of their testi-
2 mony you accept, and what weight you attach
3 to it.

4 At times during the trial, as I have said,
5 I sustained objections to questions which were
6 asked without permitting the witness to answer,
7 and I remember at least one situation where
8 I struck a question and answer, and I told you
9 to disregard that and dismiss it from your
10 minds. Now, you may not draw any inference
11 or give any consideration to an unanswered
12 question, nor can you consider any testimony
13 which I have stricken. The law requires
14 your decision to be made solely upon the
15 competent evidence before you, and items which
16 I have excluded are not legally admissible
17 and are not to be considered.

18 There are two types of evidence which
19 you may properly consider in the case, and
20 the proof may consist of testimony of those
21 who witnessed the defendant's conduct or
22 testified directly about his statements or
23 who have testified to that conduct or those
24 statements in the course of the trial, this
25 is often termed direct evidence or eyewitness

9-24

Charge of the Court.

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1 evidence. Then you can consider what would
2 be called circumstantial evidence, which is
3 proof of a chain of circumstances pointing
4 to the conduct of the defendant which, as I
5 said, is called circumstantial evidence. You
6 can consider both these types of evidence,
7 direct and circumstantial as they bear upon
8 the innocence or the guilt of the defendant.
9 In general, the law makes no distinction be-
10 tween direct or eyewitness evidence and cir-
11 cumstantial evidence, but simply requires
12 that before convicting the defendant, you
13 be satisfied from all of the evidence of his
14 guilt beyond a reasonable doubt.

15 You are permitted to draw or infer from
16 one fact the existence of another fact if
17 reason and experience support the inference,
18 that is to say, you can draw from facts which
19 you find to have been proven such reasonable
20 inferences as seem justified by reason and
21 logic, in light of your own experience in
22 your respective lives. Basically, an inference
23 is nothing more than a deduction or a con-
24 clusion which reason and common sense lead
25 you to draw from facts which have been proven.

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WESTERN DISTRICT OF NEW YORK

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Charge of the Court.

1 Any inference which you draw must reasonably
2 flow from the evidence and must be based upon
3 facts established by the evidence. Because
4 a permissible inference in law must flow nat-
5 urally and logically and be based upon facts
6 established by the evidence, it follows that
7 you may not base further inferences merely
8 upon inferences already drawn. One inference
9 cannot be based upon or drawn from another
10 inference, it must be based upon or drawn
11 from facts which you find to have been proven
12 in the evidence. If in the course of your
13 consideration of all of the evidence as to the
14 defendant you find that certain evidence
15 admits equally of two inferences, one which
16 supports the innocence of the defendant, the
17 other which supports the guilt of the defendant,
18 you must accept the inference which supports
19 innocence, and you must reject the inference
20 which supports guilt.

21 Now, intent is the purpose or aim or
22 state of mind with which a person acts or
23 fails to act, and it can be proved by indirect
24 or circumstantial evidence. Indeed, it can
25 rarely be established by any other means.

Charge of the Court.

1 While witnesses may see and hear and so be
2 able to give direct or eyewitness testimony
3 or evidence of what a person does or fails to
4 do, there can be, of course, no eyewitness
5 account of the state of mind with which a
6 person does act or omits to act. What a per-
7 son does or fails to do may indicate either
8 intent or lack of intent to act or to fail
9 to act. Unless otherwise instructed, in
10 determining any issue involving intent, you
11 may consider all of the facts and circumstances
12 in evidence in the case which may aid you in
13 determining state of mind. Evidence has been
14 offered by the Government to show that no
15 federal tax returns were filed by the defendant
16 for the years prior to 1970, 1971 and 1972.
17 Evidence was also offered to show that there
18 were no records of the defendant having filed
19 his state tax returns for the years 1970,
20 1971 and 1972, as well as for prior years,
21 with the exception of what you know has been
22 shown or endeavored to have been shown by the
23 defendant in both those regards. Such evid-
24 ence that an act may have been done or omitted
25 at one time or on one occasion is not any evid-

Charge of the Court.

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1 ence or proof whatsoever that a similar act
2 was done or omitted at another time or another
3 occasion, that is to say, evidence that the
4 defendant may have committed or omitted an
5 earlier act of a like nature, such as not
6 filing an income tax return for 1966, may not
7 be considered by you in determining whether
8 the defendant committed or omitted any act
9 charged in the information, say relative to
10 filing the income tax for 1970. The fact
11 that it may have been shown that he did not
12 file for 1966 in and of itself is no showing
13 that he did not file for 1970. Of course,
14 you have all of the evidence relative to that
15 filing before you, but I merely cite that by
16 way of an example. You cannot consider the
17 evidence of an earlier act or an earlier
18 omission of a like nature for any purpose
19 whatsoever, unless you first find from the
20 other evidence that the other evidence in the
21 case, standing alone, establishes beyond a
22 reasonable doubt that the defendant did or
23 omitted to do the particular act which is
24 charged in the count you are considering. In
25 other words, before you could give any at-

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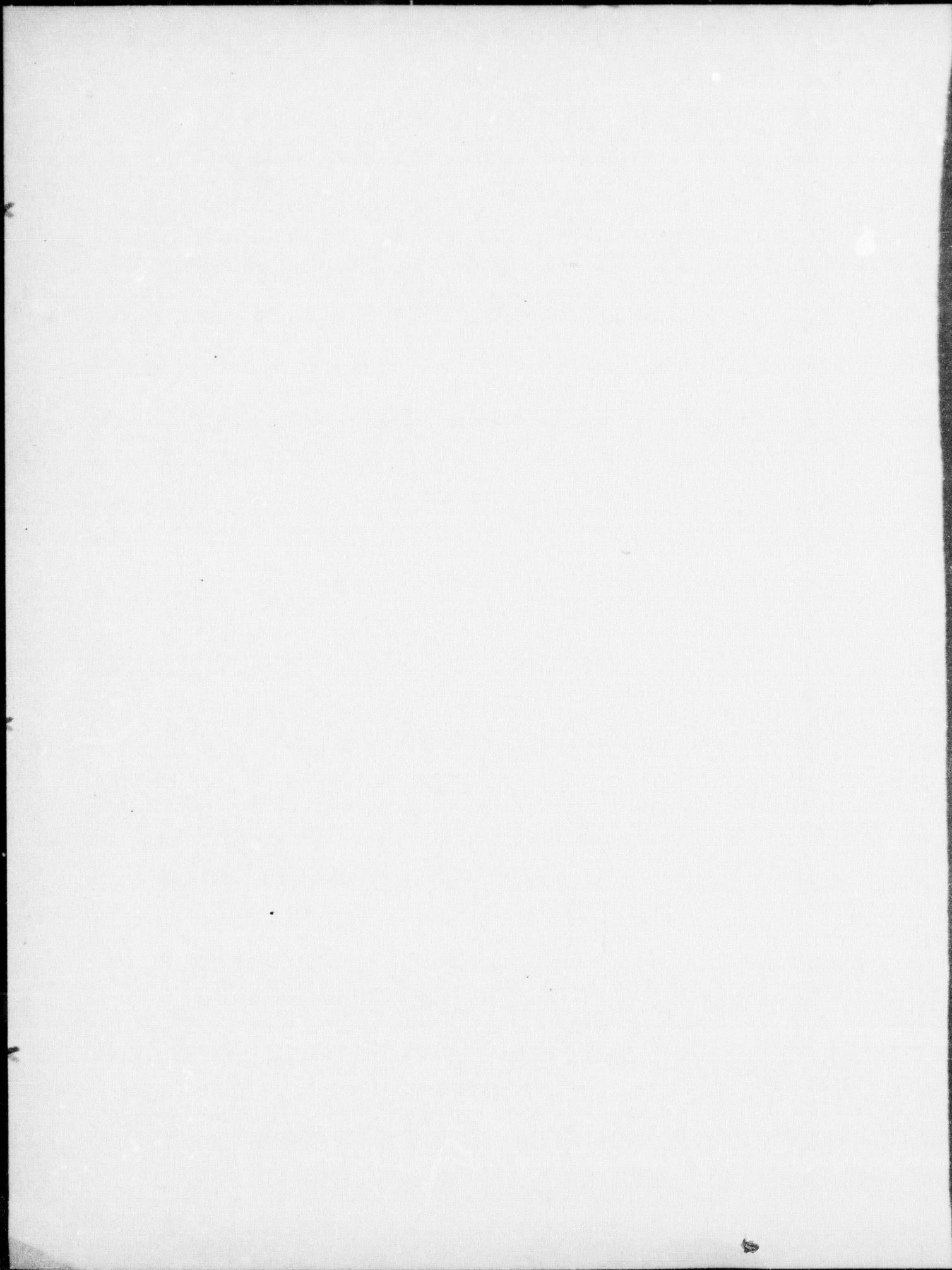
OFFICIAL REPORTERS U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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Charge of the Court.

1 tention at all to any showing that Mr. Iversen
2 had not filed, to continue my example, for
3 the year 1966, you must first find independ-
4 ently from the evidence and beyond a reason-
5 able doubt that he did not file for 1970. Now,
6 once you have done that, then you consider
7 the evidence as to the earlier omission of
8 a like nature, such as not filing for 1966.
9 In determining the state of mind or intent
10 which the defendant had when he did not file,
11 for example, for the year 1970, when he did
12 not do the act which was charged in the parti-
13 cular count you are considering, and where
14 proof of an alleged earlier act of like nature
15 is established by evidence which is clear and
16 conclusive, you may, but you are not obliged
17 to, draw the inference and find that in doing
18 or omitting to do the act, as charged in the
19 particular count under deliberation, the de-
20 fendant acted willfully and with specific
21 intent, and not because of mistake or accident
22 or other innocent reason.

23 There is evidence in the case that the
24 defendant, Mr. Iversen, made certain statements.
25 Evidence relating to any statement claimed to



Charge of the Court.

1 that he was entitled to the assistance of
2 counsel before making any statement, either
3 orally or in writing, and that if he was with-
4 out money or means to retain counsel of his
5 own choice, an attorney would be appointed
6 to advise him and to represent him free of
7 cost or obligation. Now, a statement is
8 knowingly made if it is made voluntarily and
9 intentionally, and not because of mistake or
10 accident or other innocent reason. If the
11 evidence in the case does not convince you
12 beyond a reasonable doubt that a statement
13 was made voluntarily and intentionally, you
14 should disregard it completely. On the other
15 hand, if the evidence in the case shows you
16 beyond a reasonable doubt that the statement,
17 in fact, was made voluntarily and intentionally,
18 then you may consider it as evidence in the
19 case and against the defendant.

20 You are the sole judges of the weight
21 you are going to give to the testimony of
22 different witnesses. Some of the evidence
23 in the case may be more believable to you than
24 other evidence. The matter of the credibility
25 of the witnesses you have heard is one of the

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WESTERN DISTRICT OF NEW YORK

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Charge of the Court.

1 questions of fact which you must take into
2 consideration in arriving at your verdict,
3 and you are entitled to, and you should util-
4 ize your observation of the witnesses, as
5 they appeared before you, and your own ex-
6 perience in your respective lives in deciding
7 whether or when someone is telling the truth.
8 You may find that one witness was a better
9 observer, had a more accurate memory or was
10 otherwise more reliable than other witnesses.
11 You may take into consideration in evaluating
12 the testimony the demeanor of the witness on
13 the stand, and the interest or lack of interest
14 which he or she has in the outcome of the
15 litigation. If you find that a witness know-
16 ingly testified falsely concerning any material
17 matter, you have a right to discount and dis-
18 regard all of his or her testimony or you may
19 take from the testimony that which you believe
20 to be true and disregard that which you be-
21 lieve not to be true. In that connection,
22 I advise you that a witness knowingly testifies
23 falsely if he or she thus testifies intentional-
24 ly and, again, not because of mistake or
25 other innocent reason.

Charge of the Court.

1 You are instructed as a matter of law
2 that you are not to be influenced by the
3 fact that the Government of the United States
4 is a party to this action. The Government
5 is to be considered the same as any other
6 party, except that, of course, it is the
7 prosecuting party here, and the Assistant
8 United States Attorney, Mr. Mellenger is to
9 be considered the same as any other lawyer
10 would be considered.

11 It is your duty merely to determine the
12 guilt or innocence of the defendant. You are
13 not to concern yourselves in any way with the
14 punishment that the defendant may receive if
15 convicted. Punishment is a matter with which
16 I will be concerned, if you convict the de-
17 fendant on one or more counts with which he
18 is charged.

19 I stress again, and I cannot over emphasize
20 it, you are the ones to find the facts, and
21 any example that I have given does not indi-
22 cate any opinion on my part as to how you
23 should find on any issue of fact, or whether
24 you should acquit or convict Mr. Iversen on
25 any count. These matters are solely for your

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Charge of the Court.

1 decision and I have no part in making that
2 decision, other than telling you what the law
3 is.

4 Your verdict as to the guilt or innocence
5 of Mr. Iversen on each count of the informa-
6 tion must be reached unanimously, with all
7 twelve of you agreeing on the respective re-
8 sults. I will send a copy of the information,
9 as I said, to the jury room with you, as Court
10 Exhibit A, and keep in mind that the informa-
11 tion itself is not evidence to any degree.
12 It is merely the device which is used in
13 American courts in this situation whereby
14 the defendant, Mr. Iversen, is advised of the
15 charges which have been lodged against him.
16 You are not to consider it as proving or tend-
17 ing to prove anything at all. The defendant,
18 Mr. Iversen, is charged with a separate crime
19 in each of the three counts of the information.
20 Each crime and the evidence pertaining to it
21 should be considered separately by you, and
22 a separate verdict should be returned as to
23 each count. The guilt or innocence of the
24 defendant of the crime charged in one count
25 should not necessarily affect your verdict on

Charge of the Court.

1 any other count.

2 Now, when you were sworn as jurors each
3 of you took an oath that you would well and
4 truly try this issue joined in this case and
5 a true verdict give according to the evidence,
6 so help you God. I suggest to you if you
7 follow that oath and you try the issues with-
8 out combining your thinking with any emotion,
9 you will arrive at a true and just verdict.
10 It must be clear to you that once you get in-
11 to an emotional state, and you let bias or
12 prejudice interfere with your thinking, then
13 you will not arrive at a true and just verdict.
14 As you deliberate be careful to listen to the
15 opinions and views of the other jurors, and
16 ask for an opportunity to present your own
17 views. No one juror holds center stage in
18 the jury room, and no one juror monopolizes
19 the deliberations. If after listening to the
20 other jurors, and if after stating your own
21 view, you become convinced that your own
22 view is wrong, do not hesitate because of
23 stubbornness or pride of opinion to change
24 your view. But, on the other hand, do not
25 surrender your honest conviction solely be-

Charge of the Court.

1 cause you are outnumbered. As I said, your
2 verdicts must be unanimous, each one must
3 represent the absolute conviction of every one
4 of you.

5 As the first order of business when you
6 retire to the jury room for deliberation
7 select one of your number to speak for you
8 when you come back into court or when you have
9 to be in touch with me. All communication
10 from your deliberation room will be by a note
11 which you will hand to the deputy marshal who
12 will be on duty outside of your jury room.
13 The deputy marshal will see that it gets to
14 me. Do not ask the deputy marshal any questions
15 concerning your duties. By means of a note
16 you can ask me questions, you can request a
17 clarification of my instructions on the law
18 or a reading of my instructions or all or
19 part of the testimony of any witness. Use
20 a note also to advise me when you have reached
21 your verdict or, in an appropriate circum-
22 stance, when you find yourselves so deadlocked
23 that you consider unanimity impossible. Never
24 tell me or anyone else how your voting stands
25 at any time, except to speak in open court

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Charge of the Court.

1 that a verdict or verdicts have been reached
2 unanimously.

3 Are there any exceptions or requests,
4 and if so, do you want to be heard out of the
5 presence of the jury?

6 MR. HAMSHER: The defendant has no exceptions and no requests.

7 MR. HELLENGER: The Government has no exceptions and no re-
8 quests.

9 THE COURT: All right. Swear the deputy marshals.

10
11 (Thereupon, two deputy marshals were duly
12 sworn.)

13
14 THE COURT: Now, we will send the exhibits to the jury
15 room, along with Court Exhibit A. Jurors
16 1 through 12 will go with the deputy marshal
17 at this time. The two alternates will have
18 to remain. Do each of you have personal
19 clothing in the jury room?

20
21 (Both alternate jurors indicate affirmatively.

22
23 THE COURT: As soon as they go down we will see that that
24 is obtained. All right, the rest of you may
25 go at this time.

Additional Instructions to Jury Pursuant to Request.

1 Government.

2 MR. HAMSHER: Nor do I, sir.

3 THE COURT: All right. Then I will go to lunch also, and
4 I will take the charge with me as given and
5 some note paper, and I will put together ex-
6 actly how I am going to deal with it, marking
7 out those portions that I will reread to them.

8 MR. HAMSHER: You would like us back at one o'clock?

9 THE COURT: One o'clock, yes. Let's see, the jury is --
10 they are just making arrangements now, they
11 should be over there at 12:30?

12 THE CLERK: Yes, your Honor.

13 THE COURT: 1:30 then.

14

15 (Thereupon, the court was in recess at
16 12:18 P.M.)

17

18 (Proceedings resumed, pursuant to recess,
19 commencing at 1:55 P.M.)

20

21 (Defendant present, counsel present, jury
22 present.)

23

24 THE COURT: Ladies and gentlemen, I had a note from you
25 about noon asking various questions, and at

Additional Instructions to Jury Pursuant to Request.

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1 that time I had a talk with the attorneys and
2 it seemed better to send you people out to
3 lunch, and you are back now, and I hope I can
4 answer your questions. I have read those
5 to the lawyers and into the record. You have
6 five of them, and it seems to me that you are
7 really asking three questions. Question
8 Number 1, "The jury is asking for a reclarifi-
9 cation of the terms 'willfully and knowingly
10 and intent,'" and Number 4, "Please explain
11 the concepts 'willfully and intent' in detail."
12 So they're really much the same question.
13 The second and third question again are sort
14 of one question. Number 2, "In reference
15 to Exhibit A -- which was the information --
16 it is stated that, 'He did willfully and
17 knowingly fail to make such income tax return.'"
18 Then Number 3, "Does this statement mean that
19 the defendant did not intend to file?" And
20 then Number 5, which is a separate question,
21 "Another concept in question is that of 'rea-
22 sonable doubt,' the jury would like to know
23 whether this concept embodies degree, if so,
24 how much?" On that last question reasonable
25 doubt does inherently involve a degree. It

Additional Instructions to Jury Pursuant to Request.

1 is not just simply a doubt, it is a doubt that
2 has to be a reasonable doubt. In that con-
3 nection I told you that it has to be a doubt
4 for which you have a reason, regardless of
5 your ability to set forth the whole exposition
6 of the reason. If you have in your mind
7 concretely a reason by virtue of which you
8 have a doubt, that is sufficient, even though
9 you may have some inability to set this forth
10 to the other jurors, you would know yourself
11 whether you would have that reasonable doubt.
12 I told you that proof would be beyond a rea-
13 sonable doubt if it was established in the
14 evidence -- if some fact was established in
15 the evidence in a way that you, yourself, would
16 be willing to rely and act upon in the most
17 important of your own affairs. In other words,
18 the doubt for which you have a reason has
19 to spring out of some concrete evidence, and
20 has to be such that would lead you to make
21 some sort of a decision in your own affairs.
22 I told you, on the other hand, that it is to
23 be distinguished from a doubt that is based
24 upon some emotion, rather than a reason. It
25 couldn't be just a whim or a fancy or specula-

Additional Instructions to Jury Pursuant to Request.

1 tion, I emphasize there, it is a doubt for
2 which you have a reason. If as to any element
3 of any of the crimes, the ones set forth in
4 Counts 1, 2 or 3, you have a reasonable doubt,
5 then it means that you must acquit the de-
6 fendant, you must find the defendant not
7 guilty. If you find that the Government has
8 proved Mr. Iversen's guilt as to each element
9 beyond a reasonable doubt, in other words,
10 in such a fashion that you are not left with
11 a doubt for which you have a reason, then of
12 course you would be finding Mr. Iversen guilty,
13 you would be convicting Mr. Iversen. Now,
14 I only note in that connection, as I told you
15 before, it is rarely possible to prove any-
16 thing to an absolute certainty, so that in any
17 evidentiary situation someone could always
18 have some doubt, some speculative doubt, the
19 Government does not have to positively remove
20 all possible doubt, but it cannot ask you to
21 convict Mr. Iversen if it leaves you with
22 some doubt arising out of the evidence for
23 which you have a reason. I think that is
24 sufficient as to reasonable doubt, do you
25 agree, gentlemen?

1 MR. HAMSHER: Yes, sir.

2 MR. MELLENGER: Yes, your Honor.

3 THE COURT: All right. Now as to willfully, knowingly
4 and intent, I will start with the statute,
5 which is Section 7203, which says that a
6 person, who is required to make a return,
7 who willfully fails to make such return at
8 the time or times required by law or regula-
9 tions is guilty. You see then the statute
10 talks only of willfulness. Exhibit A, which
11 sets forth the three counts of the informa-
12 tion for the respective years has the provi-
13 sion which says, "That well knowing all of the
14 foregoing facts, he did willfully and knowing-
15 ly fail to make said income tax return to the
16 said District Director of Internal Revenue,"
17 and so forth. Now, the statute speaks only
18 of willfulness, the information speaks of
19 willfulness and knowledge, neither one speaks
20 of intent. I told you the three elements,
21 one, that Mr. Iversen was a person who was
22 required to make a return for the respective
23 years; secondly, that he failed to make the
24 returns at the times required and, thirdly,
25 that his failure to make the respective re-

1 turns was willful. I told you further in that
2 connection, and I think this is an area which
3 is confusing to you because we have talked
4 of intent in two different ways, we talked
5 throughout the evidence of whether or not Mr.
6 Iversen had an intention to never file his
7 return or to not pay his tax, in other words,
8 an overriding intention in the situation. I
9 have talked in here about an intent, the
10 specific intent which relates not to that over-
11 all picture, not to whether or not Mr. Iversen
12 intended to never make a return or whether
13 he had in his mind to at sometime make a
14 return, whether or not he had some intention
15 to at sometime pay the tax, it is not what
16 we are talking about. We are talking about
17 his filing his tax return in a timely fashion
18 and, of course, there is one aspect I will
19 mention, this can have an aspect of some con-
20 tinuing thing in certain circumstances. The
21 intent we are talking about relating to crimin-
22 ality is the intent not to file, for example,
23 by April 15, 1971 his tax return for the year
24 1970, regardless of any intention he had in
5 his mind as to doing it at sometime or paying

Additional Instructions to Jury Pursuant to Request.

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1 it sometime. The statute, as I said, says
2 willfully, the information says willfully and
3 knowingly. In order to convict Mr. Iversen
4 you would have to find that he had the in-
5 tention to do that which constitutes the crime
6 or that he had the intention not to do that
7 which is a crime. Here we are talking about
8 filing a return. If you would say that Mr.
9 Iversen had an intention as of April 15, 1971,
10 or at some extended time, and I don't just
11 remember at the moment whether that was an
12 extended period or not, but if extended then,
13 of course, there is a new deadline by that,
14 I assume for the moment it was April 15, 1971,
15 whether or not Mr. Iversen had an intention
16 not to file the return as of that time, know-
17 ing that he had an obligation to do it this
18 didn't come about merely by inadvertence, by
19 putting it in his pocket and forgetting to
20 mail it or something such as that. Now, I
21 think once we bring intent back to that area
22 that probably a lot of the confusion should
23 go out of the picture for you. I told you
24 specifically that the intent to evade payment
25 of taxes is not an essential element of the

Additional Instructions to Jury Pursuant to Request.

1 offense which is charged. In other words,
2 whether or not he intended or did not intend
3 to evade the payment of taxes does not matter
4 here. The Government had to establish be-
5 yond reasonable doubt that the failure to
6 file returns on or before the dates they
7 were due for the years in question was done
8 willfully and knowingly. I talked about will-
9 fulness, saying willfulness is an essential
10 element of the offense, and it means 'voluntar-
11 ily, purposely, deliberately and intentionally,
12 as distinguished from accidentally, inadvertent-
13 ly or negligently. If he failed to file out
14 of mere negligence that would not constitute
15 willfulness. I said in that connection, of
16 course, that one who is expected to file a
17 tax return would be expected to know what his
18 income is and have some methodology, some
19 means of making the return, so that if he had
20 intentionally not kept his books or had failed
21 to keep his books, knowing they were not proper-
22 ly kept, and this did not enable him to pre-
23 pare a return, this would not keep the failure
24 to file from being willful and knowing and
25 intentional. I said the failure to make a

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Additional Instructions to Jury Pursuant to Request.

1 timely return is willful if the defendant's
2 failure to act was voluntary or purposeful
3 and with the specific intent to violate a
4 known legal duty. I said the law requires
5 Mr. Iversen to file a timely return which dis-
6 closes to the Government facts material to
7 the determination of his tax liability. There
8 is no necessity that the Government prove that
9 the defendant had an intention to defraud the
10 Government or to evade the payment of any
11 taxes in order for the defendant's failure to
12 file to be willful under the law. I said on
13 the other hand the defendant's conduct is not
14 willful if you find that he failed to file
15 a return because of inadvertence or accident
16 or due to his good faith misunderstanding of
17 the requirements of law. The excuse that Mr.
18 Iversen was too busy or under domestic and
19 financial stress are not sufficient to negate
20 or set aside the element of willfulness. An
21 intent to report the income and pay the tax
22 sometime in the future does not offset the
23 willful failure to file tax returns, as re-
24 quired, if the date the tax return is required
25 to be filed the defendant is aware of his

Additional Instructions to Jury Pursuant to Request.

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1 obligation to file and yet purposely and
2 voluntarily does not file. Likewise, the
3 fact that the defendant did file his returns
4 after being contacted by the Internal Revenue
5 Service also does not negate or set aside
6 willfulness, if you find that prior to the
7 returns being filed Mr. Iversen was required
8 to file a return and knew that he was required
9 to do so, and willfully did not. Now, I men-
10 tioned the situation that could be ongoing
11 beyond the date the return was due to be
12 filed. I said that if for any reason acceptable
13 to you the defendant's failure to file on
14 or before the date which is required was not
15 willful, then the element of willfulness is
16 not entirely negated or not entirely out of
17 the picture, because I said you might find
18 at a certain subsequent time that the previous
19 reason which you had found acceptable, as
20 far as setting aside the willfulness, was no
21 longer there, was no longer present, and there
22 was no other reason which is acceptable to
23 you for his then failing to file, and if you
24 should find in the course of your deliberations
25 that such a fact situation does exist at such

Additional Instructions to Jury Pursuant to Request. 557

later time that the defendant willfully failed to file his past due returns, the Government would have proven, if proven beyond a reasonable doubt, the essential elements of willfulness. I told you that an act is done knowingly if it is done voluntarily and intentionally and, again, not because of mistake or accident or some other innocent reason. The purpose of adding the word "knowingly" was to insure that nobody would be convicted for an act done because of mistake, accident or other innocent reason. As I told you before, with respect to an offense such as charged in this case, specific intent must be proved beyond a reasonable doubt before there can be a conviction, but again a specific intent relates to not filing the return, it doesn't relate to the overall intent. I think that is -- I did talk further about intent. I said intent is a purpose or aim or state of mind with which a person in this case fails to act. Intent may be proved by indirect or circumstantial evidence. I said it could hardly be established by any other means because witnesses could see and hear and be able to give direct evid-

Additional Instructions to Jury Pursuant to Request.

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ence of what a person did or failed to do, but no one could be an eyewitness to the state of mind with which the acts were omitted to be done. What a person does or fails to do may indicate to you either intent or lack of intent to act or to fail to act. In determining any issue involving intent, you are entitled to consider all of the facts and circumstances which are in evidence in the case, and which help you in determining the state of mind. Then the only further thing we had, I think, we talked about failure to file cariler tax returns, and failure to file New York State tax returns, as possibly bearing upon intent or state of mind. I said evidence has been offered by the Government to show that no federal tax returns were filed by the defendant for the years prior to 1970, and evidence was also offered to show there were no records of the defendant filing his New York State tax returns for the calendar years 1970, '71 and '72, as well as for the years prior to 1970. I invited your attention at that time to the fact that there was certain evidence in the case concerning the time of

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Additional Instructions to Jury Pursuant to Request.

filing some of these returns. I said that such evidence that it may have been omitted at one time or on one occasion is not any evidence or proof whatsoever that a similar act was omitted at another time or on another occasion, that is to say, evidence that a defendant may have omitted an earlier act of like nature may not be considered by you in determining whether the defendant omitted any acts charged in the information. I gave you an example of that. If, as a matter of fact, you found that he had not filed his 1966 return, as required, by April 15, 1967, you could not take that fact as any evidence of his not having filed, for example, his 1970 return by April 15, 1971. In other words, the failure to file the earlier one does not prove the fact of failing to file the later one. I told you that you had to -- before you could give any consideration to the failure to file the past return, you first have to find from the evidence before you beyond a reasonable doubt that in fact he had not filed his 1970 return by April 15, 1971. Then once you have found that to be established

Additional Instructions to Jury Pursuant to Request. 570

beyond a reasonable doubt, then you could say --
you could utilize or draw whatever inference
you think is justified from the facts also
shown in the evidence, and assume that he
did not file his earlier tax returns. You
could bring that into the picture for whatever
you think it is worth. You are the ones to
decide whether that earlier failure to file
or the failure to file New York State tax
returns has any bearing upon his intention
relative to the filing of the 1970 return,
which you have already by other evidence
determined was in fact not filed. Now, I
think that is probably all I had, and I hope,
Mr. Battle, that it answers your question.
If you have anything particularly in your
mind outstanding as to that or if you want
to fall back and regroup and see if you have
further questions, I will consider it. In
your own mind now does that seem to touch
the bases of the questions you sent up to me
or do you think there is still something that
needs to be answered?
Your Honor, as foreman of the group, are we
allowed a verbal response at this time?

Additional Instructions to Jury Pursuant to Request. 571

COURT: This is why I suggested you may want to talk, you can huddle together and talk it over, and I would like to have you express it to me, rather than getting into a whole conversation with everybody. If you think it needs a little more exploration than that, then I would suggest you go downstairs, see where you are, on the basis of what I've told you now, and if you have some further question, then send me another note. You can do it either of two ways; if there is something you want to canvass the group on, go ahead, otherwise --

MAN: We will take a moment.

COURT: All right.

RELLENCER: Your Honor, may I approach the bench, please?

COURT: Yes.

(Thereupon, an off the record discussion ensued at sidebar.)

MAN: Your Honor, the jury has decided to retire back to the jury room.

COURT: All right. Let me know when you next want to speak with me.

AFFIDAVIT OF SERVICE BY MAIL

Re: U. S. A. vs.
Irvin V. Iversen

No. 77-1255

State of New York)
County of Genesee) ss.:
City of Batavia)

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 17th day of August, 19 77
I mailed copies of a printed Pls. & Appendix
the above case, in a sealed, postpaid wrapper, to:

10 Copies of each to A. Daniel Fusaro, Clerk,
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at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Richard J. Arcara, U. S. Attorney, 502 U. S. Court House,
Buffalo, N.Y. 14202, Att: Richard E. Mellenger, Asst. U. S. Atty.

Leslie R. Johnson

Sworn to before me this

17th day of August, 19 77

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1979